

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Merwin H. Alferness et al.
 Serial No. : 10/667,029
 Filed : September 18, 2003
 For : METHODS AND APPARATUS FOR
 ALLOCATING BANDWIDTH FOR A NETWORK
 PROCESSOR
 Examiner : TANH Q NGUYEN
 Group Art Unit : 2182
 Confirmation No. : 9131
 Customer No. : 46628

Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

PETITION TO THE DIRECTOR UNDER 37 CFR § 1.181

Sir:

This Petition is responsive to the Notification of Non-Compliant Appeal Brief mailed December 31, 2009 (hereinafter *Notification*). This Petition is being timely filed within two months of the mailing of the Notification.

Initially, it is respectfully noted that this is the second such notification concerning the same issue. It is further initially noted that the Notification is raising an issue that was already substantively decided in favor of Applicants.

In the Notification, the Examiner summarizes his concerns as follows: "Essentially, appellant provides citations that support claims with a different scope than the pending claims..." *Notification*, page 2, sixth paragraph. A copy is filed herewith for reference.

It is respectfully submitted that the Notification is improperly treating a substantive issue -- under which Applicants are entitled by law to judicial review -- as a procedural issue. Specifically, the Notification is raising an enablement issue under 35 USC 112 as a procedural non-compliance issue. The question of support in the specification being different in scope than that of the claims is essentially an enablement question.

Further, the Examiner previously withdrew such an enablement rejection under 35 USC 112. See Amendment filed December 17, 2007 and Office Action mailed March 20, 2008 (in which the same basic enablement issue was withdrawn by the Examiner). Both of these items are filed herewith for reference.

In view of the above, Applicants respectfully petition the commissioner to consider the Appeal Brief compliant.

Applicants do not believe that any additional fees are due regarding this Petition. However, if any additional fees are required, please charge Deposit Account No. 04-1696.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'C. P. Mitchell', with a long horizontal stroke extending to the right.

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Dated: March 1, 2010
Hawthorne, New York